

RICHARD DOYLE, City Attorney (#88625)  
GEORGE RIOS, Assistant City Attorney (77908)  
ROBERT FABELA, Sr. Deputy City Attorney (148098)  
Office of the City Attorney  
200 East Santa Clara Street  
San José, California 95113-1905  
Telephone Number: (408) 535-1900  
Facsimile Number: (408) 998-3131  
E-Mail Address: [cao.main@sanjoseca.gov](mailto:cao.main@sanjoseca.gov)

Attorneys for CITY OF SAN JOSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JUAN DIAZ, KEITH KEESLING,  
CHRISTOPHER MURPHY, GARY  
WEEKLEY, KAREN ALLEN and other  
employees similarly situated.

## Plaintiffs,

1

## CITY OF SAN JOSE.

**Defendant.**

Case Number: C07-06424 JW

## **CITY OF SAN JOSE'S ANSWER TO COMPLAINT**

## JURY TRIAL DEMAND

1

**Defendant.**

In answer to the Complaint on file herein, Defendant CITY OF SAN JOSE responds as follows:

1. In answer to the Paragraph 1 of the Complaint, Defendant lacks sufficient information or belief to respond to the allegations therein and, on that basis, denies such allegations.

2. In answer to Paragraph 2 of the Complaint, Defendant responds that the City of San Jose is within this judicial district and that venue appears appropriate. Defendant denies each and every remaining allegation contained therein.

111

1       3.     In answer to Paragraph 3 of the Complaint, Defendant responds that to the  
2 extent venue is proper, this case should be assigned to the San Jose Division.

3       4.     In answer to Paragraph 4 of the Complaint, Defendant responds that Juan  
4 Diaz, Keith Keesling, Christopher Murphy, and Gary Weekly are or were employees of the  
5 City of San Jose. The City has no record that an employee named "Karen Allen" has worked  
6 for the fire department, although the City does have record that "Karen Allyn" is or was an  
7 employee of the City of San Jose in its fire department. Defendant lacks sufficient  
8 information or belief to respond to the remaining allegations of this Paragraph and, on that  
9 basis, denies such allegations.

10      5.     In response to paragraph 5 of the Complaint, Defendant admits that the City of  
11 San Jose is organized and operated as a charter city under the laws of the State of  
12 California. Defendant further admits the existence of 29 USC §203, whose provisions speak  
13 for themselves. Except as so admitted, Defendant denies the remaining allegations of this  
14 Paragraph.

15      6.     In answer to Paragraph 6 of the Complaint, Defendant admits the existence of  
16 29 USC sections 201, *et seq.*, whose provisions speak for themselves. Except as so  
17 admitted, Defendant denies the remaining allegations of this Paragraph.

18      7.     In answer to Paragraph 7 of the Complaint, Defendant admits the existence of  
19 29 USC sections 207, *et seq.*, whose provisions speak for themselves. Except as so  
20 admitted, Defendant denies the remaining allegations of this Paragraph.

21      8.     In answer to Paragraph 8 of the Complaint, Defendant admits that Juan Diaz,  
22 Keith Keesling, Christopher Murphy, and Gary Weekly are or were employees of the City of  
23 San Jose. The City has no record that an employee named "Karen Allen" has worked for the  
24 fire department, although the City does have record that "Karen Allyn" is or was an employee  
25 of the City of San Jose in its fire department. Defendant further admits the existence of 29  
26 USC section 207 and 29 C.F.R. 553.201, whose provisions speak for themselves.  
27 Defendants further admit the third sentence of this Paragraph and that when an employee is  
28 converted from a 40 hour shift to a 56 hour shift and or back to a 40 hour shift, the

1 employee's base monthly rate does not change. Except as so admitted, Defendant denies  
2 the remaining allegations of this Paragraph.

3 9. In answer to Paragraph 9 of the Complaint, Defendant lacks sufficient  
4 information or belief to respond to the allegations of the first sentence and, on that basis,  
5 denies such allegations. Defendants admits the existence of 29 CFR §553.230, whose  
6 provisions speak for themselves. Except as so admitted, Defendant denies the remaining  
7 allegations of this Paragraph.

8 10. In answer to Paragraph 10 of the Complaint, Defendant denies the allegations  
9 contained therein.

10 11. In answer to Paragraph 11 of the Complaint, Defendant can presently confirm  
11 and therefore admits that Juan Diaz, Keith Keesling, Christopher Murphy, and Gary Weekly  
12 at least from 2007 to the present received holiday-in-lieu pay. The City has no record that an  
13 employee named "Karen Allen" has worked for the fire department, although the City does  
14 have record that "Karen Allyn" is or was an employee of the City of San Jose in its fire  
15 department. Defendant further admits the existence of 29 CFR §778.108, whose provisions  
16 speak for themselves. Except as so admitted, Defendant denies the remaining allegations of  
17 this Paragraph.

18 12. In answer to Paragraph 12 of the Complaint, Defendant admits that the  
19 Memorandum of Agreement ("MOA") between the City of San Jose and the International  
20 Association of Firefighters, Local 230 contains or has contained special pay provisions for  
21 certain assignments, certifications, and/or accreditations, as set forth more specifically in the  
22 MOA. Except as so admitted, Defendant denies the remaining allegations of this  
23 Paragraph.

24 13. In answer to Paragraph 13 of the Complaint, Defendant denies the allegations  
25 contained therein.

26 14. In answer to Paragraph 14 of the Complaint, Defendant denies the allegations  
27 contained therein.

28 ///

15. In answer to Paragraph 15 of the Complaint, Defendant denies the allegations contained therein.

16. In answer to Paragraph 16 of the Complaint, Defendant denies the allegations contained therein.

17. In answer to Paragraph 17 of the Complaint, Defendant lacks sufficient information or belief to respond to the allegations of the first sentence and, on that basis, denies such allegations. The City admits the existence of 29 USC §211(c), whose provisions speak for themselves. Except as so admitted, Defendant denies the remaining allegations of this Paragraph.

18. In answer to Paragraph 18 of the Complaint, Defendant admits receipt on or about August 14, 2007 of a letter alleging various violations of the Fair Labor Standards Act (FLSA), which letter speaks for itself. The City further admits that the parties agreed to several extensions of time. Except as so admitted, Defendant denies the remaining allegations of this Paragraph.

## AFFIRMATIVE DEFENSES

## **FIRST AFFIRMATIVE DEFENSE**

The Complaint, and each and every claim for relief therein, fails to state facts sufficient to constitute a cause of action against this answering Defendant.

## **SECOND AFFIRMATIVE DEFENSE**

Defendant is entitled to immunity from Plaintiffs' Complaint by virtue of the provisions of the Government Code of the State of California, §§ 800 through 1000.

## THIRD AFFIRMATIVE DEFENSE

Plaintiffs are exempt from the overtime provisions of the FLSA.

## FOURTH AFFIRMATIVE DEFENSE

Defendant acted at all times in good faith and had reasonable grounds for believing that its actions or omissions were not willful violations of the FLSA.

111

111

1 **FIFTH AFFIRMATIVE DEFENSE**

2 Part or all of Plaintiffs' claims are barred by the applicable statute of limitations, 29  
3 USC §255.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 Plaintiffs failed to exhaust their administrative and/or contractual remedies required as  
6 a condition precedent to the initiation of this action.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 Some or all of Plaintiffs' claims are barred by their failure to comply with the California  
9 Tort claims Act.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 To the extent Plaintiff's claims are found to be frivolous, unreasonable, and  
12 groundless, Defendant is entitled to recover all costs and attorneys' fees incurred herein.

13 **NINTH AFFIRMATIVE DEFENSE**

14 Plaintiffs' claims are barred in whole or in part by the defense of payment.

15 **TENTH AFFIRMATIVE DEFENSE**

16 Plaintiffs' claims are barred by laches, equitable estoppel, and/or waiver.

17 **ELEVENTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' claims are barred by accord and satisfaction.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 The claims are barred by the doctrine of unclean hands.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 Any act or omission by Defendant as alleged in the Complaint was a result of the  
23 lawful and proper exercise of discretion.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 One or more of the Plaintiffs lack standing.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiffs have failed to mitigate their damages, if any.

28 ///

**SIXTEENTH AFFIRMATIVE DEFENSE**

Defendant is immune from a claim of exemplary or punitive damages by virtue of Government Code § 818 and federal law.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Defendant is entitled to offset any unpaid FLSA overtime amounts by compensation paid to Plaintiffs in excess of the statutory minimums pursuant to 29 USC §207(h).

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Defendant is relieved from recording and can disregard any and all insubstantial or insignificant periods of time that Plaintiffs may have worked outside scheduled working hours pursuant to 29 CFR §785.47.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from seeking compensation for travel to or from the principal activity and preliminary or “postliminary” activities engaged in either prior to or subsequent to the principal activities for which they are employed to perform, pursuant to 29 USC §254(a).

**WHEREFORE**, Defendant requests that Plaintiff be denied any relief; that judgment be entered in Defendant's favor; that Defendant be awarded its costs of suit, including reasonable attorneys' fees as appropriate; and such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMAND**

Defendant hereby demands a jury.

RICHARD DOYLE, City Attorney

Dated: February 14, 2008

By: \_\_\_\_\_/S/  
ROBERT FABELA  
Sr. Deputy City Attorney

Attorney for Defendant CITY OF SAN JOSE